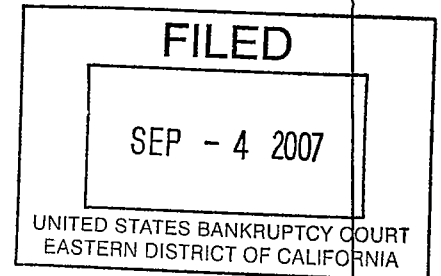


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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION



In re:

MICHAEL HAT, dba MICHAEL HAT
FARMING COMPANY,

Debtor(s).

Case No. 04-32497-B-11

POSTED ON WEB SITE

JOHN VAN CUREN, CHAPTER 11
TRUSTEE,

Plaintiff,

Adv. No. 05-2506-B ✓

vs.

D.C. No. JND-1
GSMD-1 ✓
GSMD-2

THE BANK OF THE WEST, as
successor in interest to
United California Bank,
formerly known as Sanwa Bank
California, a California
Corporation,

Respondent(s).

Submitted June 19, 2007

AND RELATED COUNTERCLAIM

MEMORANDUM DECISION

In Docket Control Number JND-1 ("Bank Motion to Reconsider"), moving party, The Bank of the West ("Bank"), asks the court to reconsider its order entered December 29, 2006 (the "First Bank SJ Order") (Adv. Dkt. 124) denying Bank's counter-motion for summary judgment ("First Bank SJ Request"), Docket Control Number GSMD-1, Adv. Dkt. 53. Plaintiff John Van

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1 Curen ("Trustee") opposes the Bank Motion to Reconsider. For the
2 reasons stated herein, the Bank Motion to Reconsider is granted.
3 The First Bank SJ Order is vacated. On reconsideration, the
4 First Bank SJ Request is granted in part in favor of the non-
5 moving party, Trustee, and denied in part. Summary judgment is
6 denied. The court grants summary adjudication to Trustee on the
7 issue of perfection of Bank's security interest in the Trailers,
8 as hereinafter defined, on July 20, 2001. Except to the
9 foregoing extent, the First Bank SJ Request is denied.

10 In Docket Control Number GSMD-2 (hereinafter defined as the
11 Second Trustee SJ Request), Trustee seeks partial summary
12 judgment on his first claim for relief. Bank opposes. For the
13 reasons stated herein, the Second Trustee SJ Request, is granted
14 in part. Pursuant to Federal Rule of Bankruptcy Procedure
15 ("Fed.R.Bankr.P.") 7056(d), incorporating Federal Rule of Civil
16 Procedure ("Fed.R.Civ.P.") 56, Trustee is entitled to summary
17 adjudication on the issue of perfection of Bank's security
18 interest in the Trailers, as hereinafter defined, on July 20,
19 2001. Except to the foregoing extent, the Second Trustee SJ
20 Request is denied.

21 On January 18, 2007, Bank filed the Bank Motion to
22 Reconsider. On February 7, 2007, Trustee filed opposition to the
23 Bank Motion to Reconsider and also filed the present
24 counter-motion, the Second Trustee SJ Request. After three
25 continued hearings, the submission of a stipulated statement of
26 facts (Adv. Dkt. 194) (the "Stipulated Facts"), and supplemental
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1 briefing, the court held final hearings in Sacramento, California
2 on June 19, 2007. Appearances were noted on the record. At the
3 conclusion of the hearings, the Bank Motion to Reconsider and the
4 Second Trustee SJ Request were taken under submission.

5 The Bank Motion to Reconsider, the First Bank SJ Request
6 and the Second Trustee SJ Request are core proceedings, and the
7 court has jurisdiction all matters. 28 U.S.C. §§ 1334 and 157.
8 Venue is proper in this court under 28 U.S.C. § 1409. There is
9 no dispute concerning jurisdiction, venue or core status.

10 The following constitutes the court's findings of fact and
11 conclusions of law pursuant to Fed. R. Bankr. P. 7052.

12 13 PROCEDURAL HISTORY

14 On July 20, 2001 (the "Petition Date"), Michael Hat, dba
15 Michael Hat Farming Company ("Debtor") commenced the above-
16 captioned voluntary Chapter 11 case. Debtor acted as debtor-in-
17 possession until April 11, 2003, when Trustee was appointed.
18 Trustee obtained confirmation of his second amended plan of
19 liquidation on August 24, 2005.

20 On December 12, 2005, the Trustee filed the instant
21 adversary proceeding. An amended complaint was filed on December
22 29, 2005, setting forth two claims for relief. The first claim
23 for relief seeks to avoid Bank's interest in 118 sets of farm
24 trailers using the "strong-arm" powers of 11 U.S.C. § 544. The
25 second claim for relief objects to Bank's claim as authorized by
26 Section 5.4.3.3 of the confirmed chapter 11 plan. Bank answered
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1 the amended complaint and filed a counterclaim on January 11,
2 2006. The answer admitted this court's jurisdiction, that this
3 court was the proper venue, and that this matter was a core
4 proceeding. It denied a sufficient portion of the amended
5 complaint to keep the matter at issue. The counterclaim set
6 forth one claim for relief alleging unjust enrichment. Trustee
7 answered the counterclaim on January 24, 2006.

8 Trustee filed his first motion for partial summary judgment
9 (D.C. No. GSMD-1) ("First Trustee SJ Request") on August 15, 2006
10 (Adv. Dkt. 20). On September 12, 2006, Bank filed timely
11 opposition to the First Trustee SJ Request and, by countermotion,
12 the First Bank SJ Request. After several continuances, the First
13 Trustee SJ Request and the First Bank SJ Request came on for
14 final hearings on November 7, 2006 at which time the matters were
15 taken under submission. By orders entered December 29, 2006, the
16 court denied both the First Trustee SJ Request and the First Bank
17 SJ Request. As to the First Trustee SJ Request, the court
18 concluded that Bank's evidentiary objections eliminated any
19 evidence identifying the property that was the subject of the
20 amended complaint. As to the First Bank SJ Request, the court
21 concluded that Bank had failed to provide sufficient independent
22 evidence identifying the property at issue and showing that Bank
23 was entitled to summary judgment.

24 On January 18, 2007, Bank filed the Bank Motion to
25 Reconsider. On February 7, 2007, Trustee filed opposition to the
26 Bank Motion to Reconsider and also filed a countermotion, (D.C.

1 No. GSMD-2), again seeking partial summary adjudication ("Second
2 Trustee SJ Request") (Adv. Dkt. 144). At a hearing on April 3,
3 2007, the court urged the parties to attempt to generate a
4 stipulated statement of facts on which the court could rely in
5 rendering a decision on the merits. The parties filed the
6 Stipulated Facts on May 31, 2007. After one additional
7 continuance for the parties to submit supplemental briefs
8 addressing the effect of the Stipulated Facts, the Second Trustee
9 SJ Request and the Bank Motion to Reconsider came on for a final
10 hearing on June 19, 2007, at which time the matters were taken
11 under submission.

12 13 **FACTS**

14 AS noted above, on May 31, 2007, the parties filed the
15 Stipulated Facts, which incorporate the contents of Schedules A
16 and B attached as exhibits to the Stipulated Facts. The facts
17 alleged in the Stipulated Facts are fully incorporated herein.

18 Prior to the Petition Date, Debtor and two related companies
19 conducted an agricultural enterprise in the Central Valley of
20 California. Grapeco, Inc., one of the related companies, filed
21 its own chapter 11 petition on the Petition Date in the above-
22 referenced Bankruptcy Court, commencing case no. 01-92889-A-7
23 (now designated case no. 04-32498-B-7). Capello, Inc., the other
24 related company, also filed a chapter 11 petition on the Petition
25 Date in said Bankruptcy Court, commencing case no. 01-92890-A-7
26 (now designated case no. 04-32499-B-7). The bankruptcy cases of
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1 Grapeco, Inc. and Capello, Inc. have since been converted to
2 chapter 7 of the Bankruptcy Code, and chapter 7 trustees have
3 been appointed.

4 As of the Petition Date, Bank asserted a perfected security
5 interest in all of Debtor's personal property, including
6 equipment and vehicles, pursuant to a UCC-1 financing statement
7 filed in the California Secretary of State's office on April 9,
8 1992, and a UCC-2 continuation statement filed on November 19,
9 1996.

10 On February 11, 2007, the court approved a stipulation
11 between Bank and Trustee for relief from the automatic stay. The
12 stipulation allowed Bank to foreclose on equipment collateral,
13 including "94 sets of good trailers and 24 sets of junk
14 trailers."

15 On March 3, 2004, Bank foreclosed on its equipment
16 collateral by private sale to Jennifer Hat, formerly known as
17 Jennifer Horan ("Horan") pursuant to an Asset Purchase Agreement
18 ("APA") dated March 3, 2004. The APA identified the purchased
19 assets, including "94 sets good trailers and 24 sets good [sic]
20 trailers." Bank sold to Horan, and she took physical possession
21 of, 216 individual trailers pursuant to the APA. Two hundred
22 sixteen (216) individuals trailers (the "Trailers") are
23 identified in Schedule A attached to the Stipulated Facts. (Adv.
24 Dkt. 194 at 6). The registration status of each Trailer, i.e.
25 the date on which the last registration expired for each Trailer
26 prior to the Petition Date or the date on which Debtor last
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1 obtained a certificate of planned non-operation prior to the
2 Petition Date, is set forth on Schedule B to the Stipulated
3 Facts. (Adv. Dkt. 194 at 16).

4 Each "set" of Trailers consists of two Trailers: a semi
5 trailer with a single axle, to be attached to a truck, and a pull
6 trailer with two axles, to be attached to the semi trailer. Each
7 Trailer has a flat bed to which open tanks that hold harvested
8 crops of grapes may be affixed. No Trailer is equipped with
9 rollers on its bed. The manufacturer and model years of the
10 Trailers vary. Each Trailer, without load, weighs at least three
11 tons. Each Trailer is capable of hauling, and, when properly
12 registered, did haul approximately 12 tons of grapes. Therefore,
13 each of the Trailers, considering its own weight and its typical
14 load, would generally weigh in excess of 30,000 pounds when
15 loaded. Each Trailer has a gross weight vehicle rating (meaning,
16 the maximum weight, with load, legally allowable for that vehicle
17 on public roads) in an amount in excess of 30,000 pounds. The
18 Trailers are not capable of moving on their own, as they do not
19 contain motors, and are instead pulled by a truck.

20 The Trailers were used as part of the process of harvesting
21 grapes in the following manner. Mechanical grape harvesters
22 picked the grapes from the vines. The grape harvesters
23 transferred the picked grapes by conveyor belt to grape gondolas,
24 which had been brought into the fields. When the gondolas were
25 filled, tractors would pull the gondolas to the Trailers, which
26 were located at either end of the field. The Trailers would be
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1 filled and were then moved on public roads to remote processing
2 facilities. These processing facilities included the Grapeco
3 processing facility in Madera, California, and the Capello winery
4 in McFarland, California. In some cases the Trailers were moved
5 for more than one hundred miles on public highways.

6 Debtor's harvest season generally included the months of
7 August, September, and October. Debtor's general practice was to
8 register those trailers that the Debtor intended to use during
9 the harvest season with the California Department of Motor
10 Vehicles (the "DMV") on a partial-year basis. Once the harvest
11 season was over and the hauling of Debtor's crops was complete,
12 Debtor would file certificates of planned non-operation for each
13 trailer pursuant to California Vehicle Code Section 4604(a). The
14 DMV issued permanent trailer identification cards or registration
15 cards for each Trailer after March 3, 2004, the date Bank and
16 Horan entered into the APA.

17 Debtor did not file certificates of planned non-operation
18 for the Trailers after the 1999 harvest. Prior to the Petition
19 Date, the DMV issued a certificate of ownership entitled
20 "Certificate of Title" for each Trailer, containing the vehicle
21 identification number, make and model year of the trailer, and
22 the name and address of the registered owner and any legal owner.
23 At no time was Bank ever listed as the legal owner or lienholder
24 on any of the certificates of ownership for any of the Trailers.

ANALYSIS**JND-1: Issues**

As to JND-1, the analysis first addresses whether reconsideration of the First Bank SJ Request is appropriate. Second, the analysis addresses whether and if so, to what extent the First Bank SJ Request should be granted.

GSMD-2: Issues

As to GSMD-2, the analysis first addresses whether Trustee may seek partial summary judgment in this adversary proceeding a second time, the court having denied his first motion for partial summary judgment. Second, the analysis addresses whether Trustee may bring an independent motion for partial summary adjudication on the issues of perfection of Bank's security interest, and the avoidance of Bank's security interest, without addressing Bank's affirmative defenses. Third, the analysis addresses the merits of the issues of perfection and avoidance of Bank's security interest.

JND-1: Reconsideration

Bank seeks reconsideration of the SJ Order which denied the First Bank SJ Request based on finding that the First Bank SJ Request lacked independent admissible evidence identifying the property at issue in this adversary proceeding. The Bank Motion to Reconsider requests that the court exercise its inherent equitable power to modify or vacate its own interlocutory order in the interest of justice. Smith v. Massachusetts, 543 U.S. 462, 125 S.Ct. 1129 (2005); A&A Sign Company, Inc. v. Maughan,

1 419 F.2d 1152, 1155 (9th Cir. 1969). Such reconsideration is
2 appropriate where (1) there is newly discovered evidence, (2) the
3 court committed clear error, (3) the decision was manifestly
4 unjust, or (4) there is an intervening change in controlling law.
5 School District No. 1J, Multnomah County, Oregon v. A C and S,
6 Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). Bank argues that this
7 court committed clear error in finding that, because it sustained
8 Bank's objections to Trustee's evidence, no admissible evidence
9 of the identity of the property at issue was presented, and
10 neither the First Trustee SJ Request nor the First Bank SJ
11 Request could be granted. The court agrees with Bank's
12 contention and therefore grants the request to reconsider the
13 First Bank SJ Request.

14 Bank correctly points out that a short excerpt from the
15 deposition of Horan contained in the voluminous exhibits to the
16 First Bank SJ Request properly authenticated Exhibit 9 to the
17 Horan deposition which consisted of the permanent trailer
18 registration cards for approximately 210 trailers. The
19 deposition was itself properly authenticated by inclusion of the
20 reporter's certification. Orr v. Bank of America, N.T & S.A.,
21 285 F.3d 764, 774 (9th Cir 2002). Bank also provided a summary
22 prepared by counsel of the information contained in Exhibit 9.
23 The summary was attached to the notice of hearing on the First
24 Bank SJ Request. The court did not see the summary during the
25 initial resolution of the First Bank SJ Request, primarily
26 because the court did not look at the notice of hearing for
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1 evidence in support of the motion. See Local Bankruptcy Rule
2 9014-1(d)(1) and the Revised Guidelines for Preparation of
3 Documents, ¶ (6)(a).

4 Considering the evidence detailed in the Bank Motion to
5 Reconsider, the court agrees that there was independent
6 admissible evidence filed with the First Bank SJ Request and that
7 the court's prior ruling concluding differently was clear error.
8 Based on this finding, the court holds that reconsideration is
9 appropriate in this circumstance and the Bank Motion to
10 Reconsider is granted to that extent.

11 **GSMD-1: Reconsideration of the First Bank SJ Request**

12 On reconsideration, the First Bank SJ Request is granted in
13 part and denied in part on the merits. Bank is not entitled to
14 summary judgment because the court concludes that Bank has failed
15 to show that its security interest was perfected on the Petition
16 Date. Instead, the law and facts show that Bank was not
17 perfected on the Petition Date. The court declines in this
18 ruling to grant summary judgment to the Trustee on the first
19 claim for relief as the other elements of that claim are not at
20 issue in the First Bank SJ Request. See Portsmouth Square, Inc.,
21 v. Shareholders Protective Committee, 770 F.2d 866, 869 (9th Cir.
22 1995) ("[S]ua sponte summary judgment is appropriate where one
23 party moves for summary judgment and, after the hearing, it
24 appears from all the evidence presented that there is no genuine
25 issue of material fact and a non-moving party is entitled to
26 judgment as a matter of law."). However, pursuant to

1 Fed.R.Civ.P. 56(d), incorporated by Fed.R.Bankr.P. 7056, the
2 court concludes that the undisputed material facts show that
3 Trustee is entitled to "partial summary judgment," i.e. summary
4 adjudication, on the issue of perfection as of the Petition Date.
5 11 MOORE'S FEDERAL PRACTICE, § 56.40[2] (Matthew Bender 3d ed.
6 2007) ("Because of the particular nature of the claims raised, a
7 court may also make a partial summary judgment ruling that
8 resolves issues of both law and fact.") citing Gillette v.
9 Delmore, 886 F.2d 1194, 1197-1199 (9th Cir. 1989).

10 Fed.R.Civ.P. 56, incorporated by Fed.R.Bankr.P. 7056,
11 provides that summary judgment is appropriate if the pleadings,
12 depositions, answers to interrogatories, admissions on file, and
13 declarations, if any, show that there is "no genuine issue of
14 fact and that the moving party is entitled to judgment as a
15 matter of law."

16 Bank filed the First Bank SJ Request on the first amended
17 complaint filed by Trustee on December 29, 2005 (Dkt. No. 8).
18 The first claim for relief in the first amended complaint seeks
19 to avoid an allegedly unperfected security interest in the
20 Trailers pursuant to the strong arm powers of 11 U.S.C. §§
21 544(a)(1) and (a)(2) and to recover the Trailers or their value.
22 The second claim for relief objects to Bank's claim under Section
23 5.4.3.3 of the confirmed chapter 11 plan.

24 Through the First Bank SJ Request, Bank seeks summary
25 judgment on the first claim for relief arguing that the security
26 interest in the Trailers was properly perfected as of the
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1 Petition Date and is therefore unavoidable. Were Bank to prevail
2 on the first claim for relief, the second claim for relief would
3 become moot. Bank argues that summary judgment is appropriate
4 because the undisputed facts before the court entitle Bank to
5 judgment as a matter of law. Although the court agrees that
6 there are no disputes of material fact on this issue,
7 particularly so after submission of the Stipulated Facts, Bank
8 has not shown that it is entitled to judgment as a matter of law.
9 Therefore, summary judgment in favor of Bank on the First Bank SJ
10 Request is denied.

11 The First Bank SJ Request did not seek to prove that Bank is
12 entitled to judgment on each and every element of the first claim
13 for relief. Bank is not required to make such a showing.
14 Instead, if Bank can show that the Trustee cannot meet his burden
15 of proving a single necessary element of the first claim for
16 relief, then Bank will prevail. Adickes v. S.H. Kress & Co., 398
17 U.S. 144, 158-60 (1970). In the First Bank SJ Request, Bank has
18 chosen to focus solely on the issue of perfection of its security
19 interest in the Trailers. That issue is addressed below.

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21 **GSMD-2: Trustee May Bring A Second Motion**
22 **for Partial Summary Adjudication**

23 In its opposition to the Second Trustee SJ Request, Bank
24 argues that Trustee may not bring a second motion for a partial
25 summary adjudication on the same grounds asserted in Trustee's
26 first motion for a partial summary adjudication. Bank asserts
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1 that the Second Trustee SJ Request must be judged under the
2 standards for a motion for reconsideration. Bank contends that
3 such reconsideration is only appropriate where (1) there is newly
4 discovered evidence, (2) the court committed clear error, (3) the
5 decision was manifestly unjust, or (4) there is an intervening
6 change in controlling law. School District No. 1J, Multnomah
7 County, Oregon v. A C and S, Inc., 5 F.3d 1255, 1263 (9th Cir.
8 1993). Bank argues that Trustee has not satisfied this standard.

9 Without explicitly stating that the court's prior order
10 denying Trustee summary judgment is the "law of the case," Bank's
11 recitation of the standard for reconsideration nonetheless
12 impliedly asserts that the law of the case doctrine applies here.
13 To the extent that the law of the case doctrine is applicable,
14 however, it simply expresses a common judicial practice and does
15 not limit the court's power. See Castro v. United States, 540
16 U.S. 375, 124 S. Ct. 786, 793 (2003). Application of the law of
17 the case doctrine is discretionary and does not limit a court's
18 power to reconsider its own decisions prior to final judgment.
19 Arizona v. California, 460 U.S. 605, 103 S. Ct. 1382,
20 (1983) ("Law of the case directs a court's discretion, it does not
21 limit the tribunal's power."). The law of the case doctrine is
22 not discretionary only when the mandate of a higher court is
23 involved. See City of Los Angeles v. Santa Monica BayKeeper, 254
24 F.3d 882, 888-89 (9th Cir. 2001) (law of the case doctrine does
25 not impinge on district court's power to reconsider its own
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1 interlocutory order so long as that court has not been divested
2 of jurisdiction over order by commencement of appeal).

3 Furthermore, in the Ninth Circuit "[i]t is well-settled that
4 a denial of summary judgment does not establish law of the case
5 and does not preclude a second motion for summary judgment."

6 Hydranautics v. FilmTec Corp., 306 F. Supp. 2d 258, 968 (S.D.
7 Cal. 2003) (citing Shouse v. Ljungren, 792 F.2d 902, 904 (9th
8 Cir. 1986); Preaseau v. Prudential Ins. Co. of America, 591 F.2d
9 74, 79-80 (9th Cir.1979); Dessar v. Bank of America Nat. Trust
10 and Sav. Ass'n, 353 F.2d 468, 470 (9th Cir.1965); Beedy v.
11 Washington Water Power Co., 238 F.2d 123, 127 (9th Cir.1956);
12 Breeland v. Southern Pac. Co., 231 F.2d 576, 579 (9th Cir.1955);
13 Curran v. Kwon, 153 F.3d 481, 487 (7th Cir.1998)). The court's
14 prior order denying the First Trustee SJ Request does not bind
15 this court's subsequent determinations. Bank has cited no
16 authority, other than the general standard that governs motions
17 for reconsideration, that prohibits Trustee from bringing a
18 second motion.

19 In this instance the court finds that it is appropriate to
20 decide the merits of the Second Trustee SJ Request. The court
21 previously felt unable to reach the merits of the First Trustee
22 SJ Request because of the perceived absence of admissible
23 evidence identifying the property at issue. Now that the parties
24 have stipulated to facts and have developed the record more
25 fully, it is appropriate to reach the previously unaddressed
26 merits of the underlying legal issue.

1 GSMD-2: Partial Summary Adjudication by Independent Motion

2 Bank also argues that Trustee cannot properly request
3 partial summary judgment subject to remaining affirmative
4 defenses that Bank may assert. Bank construes the trustee's
5 request as "seeking a determination of a single issue encompassed
6 within a claim for relief or defense." (Adv. Dkt. 170 at 13)
7 (emphasis in original). Bank asserts that Trustee is only
8 seeking the partial summary adjudication of a single discrete
9 issue that is contained within his first claim for relief. That
10 issue, Bank asserts, is "the proper method by which one perfects
11 a security interest in hauling trailers." (Adv. Dkt. 170 at 14).
12 Bank argues that Trustee cannot obtain a partial summary
13 adjudication on that issue by filing a motion that requests a
14 determination as to that issue alone while reserving other issues
15 related to liability or defenses for a later proceeding. Bank
16 argues that the Second Trustee SJ Request should be denied
17 because it is procedurally improper.

18 The court disagrees with Bank's assertion that the Second
19 Trustee SJ Request should be denied because it chiefly asks for
20 resolution of one issue affecting the first claim for relief.¹
21 Furthermore, the court concludes that Trustee may seek partial
22 summary adjudication by independent motion. Rule 56(a) provides
23 that a party seeking to recover upon a claim, counterclaim, or
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25 ¹ The court notes that Trustee also seeks a determination as
26 to a second issue: whether he may avoid Bank's security interest.
27 For reasons discussed below, that request is denied without
28 prejudice.

1 cross-claim may after the expiration of twenty days after the
2 commencement of the case, "move . . . for a summary judgment in
3 the party's favor upon all or any part thereof." Fed.R.Civ.P.
4 56(a) (emphasis added). Whether the phrase "any part thereof"
5 permits adjudication of individual issues within a claim or
6 defense is unclear. Schwarzer, Tashima, and Wagstaffe in FEDERAL
7 CIVIL PROCEDURE BEFORE TRIAL ¶ 14:40 (2007) collect cases that have
8 allowed piecemeal disposition of issues. See Barker v. Norman,
9 651 F.2d 1107, 1123 (5th Cir. 1981) (noting that summary judgment
10 may be proper as to some issues but not as to others); Robi v.
11 Five Platters, Inc., 918 F.2d 1439 (9th Cir. 1990) (permitting
12 summary adjudication of issues based on collateral estoppel
13 effect of prior proceeding). They have also collected cases that
14 disapprove piecemeal disposition of issues. See Arado v. General
15 Fire Extinguisher Corp., 626 F.Supp 506, 509 (N.D. Ill.
16 1985) ("[D]espite Rule 56(a)'s reference to 'all or any part' of a
17 claim, the Rule authorizes only the granting of appealable
18 'judgments' disposing of entire claims."); SEC v. Thrasher, 152
19 F.Supp.2d 291, 295 (S.D.N.Y. 2001) (holding that "summary judgment
20 is not a vehicle for fragmented adjudication of non-determinative
21 issues"). To the extent that Rule 56(a) is read as permitting
22 only the granting of a "judgment" as that term is used to stand
23 for a final, appealable decision of the court, the court agrees
24 with Bank. Trustee cannot obtain a judgment on the first claim
25 for relief without addressing Bank's affirmative defenses.

1 The nature of Trustee's request also prevents him from
2 obtaining the interlocutory summary judgment described in Rule
3 56(c). Rule 56(c) provides that a summary judgment,
4 "interlocutory in character, may be rendered on the issue of
5 liability alone although there is a genuine issue as to the
6 amount of damages." Fed.R.Civ.P. 56(c). As a mechanism for
7 granting "partial summary judgment on [Trustee's] first claim for
8 relief, subject to" Bank's remaining affirmative defenses, Rule
9 56(c) is unavailable. Bank has asserted affirmative defenses
10 that are directed at the issue of Bank's liability, including
11 waiver, estoppel, unclean hands, and consent. Trustee cannot
12 obtain an interlocutory summary judgment under Rule 56(c) without
13 addressing these affirmative defenses.

14 However, Rule 56 does provide a mechanism by which Trustee
15 may obtain a determination in the form of an order of the court
16 which resolves a single issue that is part of the first claim for
17 relief. Rule 56(d) provides that if a court does not render
18 judgment upon the whole case or for all relief requested, the
19 court shall if practicable ascertain what material facts are
20 disputed and undisputed and "make an order specifying the facts
21 that appear without substantial controversy, including the extent
22 to which the amount of damages or other relief is not in
23 controversy." Fed.R.Civ.P. 56(d) (emphasis added). "In rendering
24 a partial summary judgment ruling in favor of a movant, a court
25 need not provide relief completely dispositive of individual
26 claims that are part of a larger action. A partial summary
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1 judgment ruling may dispose of only a single issue relevant to a
2 claim." 11 James Wm. Moore, et al., MOORE'S FEDERAL PRACTICE §
3 56.40[2] (3rd Ed. 2007). Rule 56(d) allows a court to salvage
4 some of the effort involved in ruling on a failed motion for
5 summary judgment by resolving issues of law and fact for which a
6 trial would not be necessary. By issuing orders that resolve
7 significant questions, the court can focus on the true matters in
8 controversy. Id. (collecting cases). Although Professor Moore
9 refers to the relief allowed by Rule 56(d) as "partial summary
10 judgment," noting that it is now well-established that a court
11 may "grant" partial summary "judgment," this court prefers the
12 term "partial summary adjudication" as a means of distinguishing
13 the relief permitted by Rule 56(d) from a final, appealable
14 judgment. See Id. at § 56.40[1]. Rule 56(d) permits the court
15 to enter relief in the nature of what Trustee seeks: a
16 determination as to a single issue of law based on the undisputed
17 facts contained in the Stipulated Facts, without reaching the
18 question of whether affirmative defenses apply.

19 The issue, then, is whether Trustee may obtain this relief
20 by filing an independent motion seeking adjudication of a
21 particular issue, rather than filing a motion for full summary
22 judgment that addresses all elements of the claim and all
23 affirmative defenses. Bank argues that Rule 56(d) does not
24 permit an independent motion. The logical extension of this
25 argument is that the court may make a determination under Rule
26 56(d) only after having been presented with a motion for full
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1 summary judgment, having considered it, and having determined
2 that it cannot be granted.

3 This argument is unpersuasive for two reasons. First, the
4 United States District Court for the Eastern District of
5 California, through its Local Rules of Practice, permits
6 independent motions under Rule 56(d). Local Rule 56-260,²
7 entitled "Motions for Summary Judgment or Summary Adjudication"
8 (emphasis added), provides in subsection 56-620(f) that

9 This Rule shall apply to motions for orders specifying
10 material facts that appear without substantial
11 controversy pursuant to Fed. R. Civ. P. 56(d), except
12 that the proposed "Statement of Undisputed Facts" and
13 the "Statement of Disputed Facts" shall be limited to
the facts that the moving party asserts are without
substantial controversy and the facts the opposing
party contends are in dispute.

14 L.R. 56-620(f) (2007) (emphasis added).

15 Second, in this instance, to require Trustee to file a
16 motion seeking complete summary judgment or explicitly request
17 full summary judgment in his motion before the court is able to
18 enter a partial summary adjudication pursuant to Rule 56(d) would
19 needlessly elevate form over substance and confound the policy
20 underlying Rule 56(d). The issue of perfection of Bank's
21 security interest is potentially case dispositive. Both the Bank
22 Motion to Reconsider and the Second Trustee SJ Request, and the
23 parties' efforts in reaching the Stipulated Facts are primarily
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25 ² Local Rule 56-260 does not apply to this adversary
26 proceeding because it is not incorporated by Local Bankruptcy
27 Rule 1001-1(c). However, the existence of this rule in the
District Court highlights the flaw in Bank's argument.

1 directed toward resolving this issue. Even if the adjudication
2 of this issue were not to result in the immediate disposition of
3 the case, significant time needed for trial would be saved. The
4 partial summary adjudication requested by Trustee goes much
5 further than seeking the resolution of a merely evidentiary
6 matter en route to summary judgment, or seeking an adjudication
7 of an issue of fact which would not be dispositive of an issue or
8 even part of an issue. Courts have recognized distinctions in
9 the type of issues that are to be resolved by partial summary
10 adjudication in determining whether a request for a partial
11 adjudication is proper. See Barker, 651 F.2d at 1123 (noting
12 summary judgment may be proper as to some issues but not as to
13 others). In addition, Ninth Circuit district courts have found
14 independent requests for partial summary adjudication to be
15 appropriate where the fact or issue to be adjudicated is
16 potentially case dispositive. See Phase Four Industries, Inc. v.
17 Marathon Coach, Inc., 2005 WL 2676887 N.D.Cal. at *6 (October 20,
18 2005) ("The efficacy of this approach is particularly suitable to
19 this case because the issue of priority of inventorship or
20 derivation is potentially case dispositive."); Advanced
21 Semiconductor Materials America Inc. v. Applied Materials Inc.,
22 1995 WL 419747 (N.D. Cal. July 5, 1995) (concluding that
23 claimant's motion for partial summary judgment on a significant,
24 dispositive issue was proper); Ajir v. Exxon Corporation, 1995
25 WL 261411, at *4 (N.D.Cal. May 2, 1995) (concluding that a motion
26 for partial summary judgment may properly be directed to only
27
28

1 part of a claim where summary adjudication of discrete theories
2 of liability helps focus issues and conserve judicial resources).

3 For the foregoing reasons, Trustee may seek by independent
4 motion a partial summary adjudication as to the issues of
5 perfection of Bank's security interest and avoidance of Bank's
6 security interest.

7 **GSMD-1 and GSMD-2: Perfection of Bank's Security Interest**

8 The perfection issue presented here depends on the interplay
9 between Division 9 of the California Commercial Code³ and the
10 California Vehicle Code. The court's analysis begins with the
11 Commercial Code. "Except as otherwise provided in subdivisions
12 (c) and (d), this division applies to each of the following: (1)
13 A transaction, regardless of its form, that creates a security
14 interest in personal property or fixtures by contract...." Cal.
15 Comm. Code. § 9109(a)(1) (West 2007). It is undisputed that
16 Debtor granted Bank a security interest in the Trailers by
17 contract. As noted above, the only issue is whether or not that
18 security interest was properly perfected.

19 The general rule regarding perfection of security interests
20 in personal property is set forth in Commercial Code Section
21 9310. "Except as otherwise provided in subdivision (b) and in
22 subdivision (b) of Section 9312, a financing statement must be
23 filed to perfect all security interests and agricultural liens."
24 Cal. Comm. Code § 9310(a) (West 2005). Among the exceptions set

25
26 ³ Unless otherwise noted, all references to Division 9 of
27 the California Commercial Code are to such Division as it was
revised and effective on July 1, 2001.

1 forth in Section 9310(b) is one incorporating Section 9311. "The
2 filing of a financing statement is not necessary to perfect a
3 security interest that satisfies any of the following conditions:
4 ... (3) It is a security interest in property subject to a
5 statute, regulation or treaty described in subdivision (a) of
6 section 9311." Cal. Comm. Code § 9310(b)(3) (West 2005). Section
7 9311(a)(2)(A) is implicated under the facts of this adversary
8 proceeding.

9 Except as otherwise provided in subdivision (d), the
10 filing of a financing statement is not necessary or
11 effective to perfect a security interest in property
12 subject to any of the following:

13 . . .

14 (2)(A) The provisions of the Vehicle Code which require
15 registration of a vehicle or boat.

16 Cal. Comm. Code § 9311(a)(2)(A) (West 2007) (Emphasis added).

17 The court notes that Section 9311 contains an exception in
18 Subsection (d), the application of which would obviate any need
19 to proceed further.

20 (d) During any period in which collateral subject to a
21 statute specified in paragraph (2) of subdivision (a)
22 is inventory held for sale or lease by a person or
23 leased by that person as lessor and that person is in
24 the business of selling goods of that kind, this
25 section does not apply to a security interest in that
26 collateral created by that person.

27 Cal. Comm. Code § 9311(d) (West 2007). The court concludes that
28 subdivision (d) does not apply to the facts of this case for two
29 reasons: (1) because the Trailers are not "inventory," and (2)
30 because the Debtor was not in the business of selling trailers.

31 Inventory is a defined term in the Commercial Code.

1 "Inventory" means goods, other than farm products,
2 which are any of the following:

3 (A) Leased by a person as a lessor.

4 (B) Held by a person for sale or lease or to be
5 furnished under a contract for service.

6 (C) Furnished by a person under a contract of service.

7 (D) Consist of raw materials, work in process, or
8 materials used or consumed in a business.

9 Cal. Comm. Code § 9102(48) (West 2007). None of these
10 definitions applies to the Trailers. Debtor owned the Trailers
11 for his own use to transport grapes from his various vineyards to
12 various sites for processing.

13 Additionally, the Debtor was not in the business of selling
14 farm trailers. He operated an agricultural enterprise in which
15 his sole proprietorship Michael Hat Farming Company grew grapes
16 throughout the San Joaquin Valley and elsewhere. Those grapes
17 were sold both to Debtor's wholly owned corporations Grapeco,
18 Inc., and Capello, Inc., and to third parties. Debtor used the
19 Trailers seasonally to haul grapes from his fields to the
20 processing facilities.

21 Because the Trailers were not "inventory," the holding of In
22 re Babaeian Transportation Co., 206 B.R. 536, 543 (Bankr. C.D.
23 Cal. 1997) is distinguishable. In Babaeian, the party giving the
24 security interest in the taxi cabs was leasing the vehicles to
25 the individual drivers. Thus the vehicles fell squarely within
26 the ambit of Commercial Code Section 9102(48)(A), "goods...leased
27 by a person as a lessor."

28 The court must therefore resolve the question of whether or
not the Trailers are property "subject to the provisions of the
Vehicle Code which require registration of a vehicle or boat."

1 If so, then the Vehicle Code governs perfection. If not, then
2 the terms of the Commercial Code apply. The answer to this
3 question is resolved by the express language in Sections 6300 and
4 6301 of the California Vehicle Code.

5 Bank focuses its argument on the use, or more particularly
6 the lack of use, of the Trailers on the Petition Date. It argues
7 that the Trailers were not required to be registered, and
8 therefore were not "subject to the provisions of the Vehicle Code
9 which require registration of a vehicle," because they were not
10 being driven, moved or left standing on a highway or in any off-
11 street public parking facility as of the Petition Date. Bank
12 points to language in California Vehicle Code Section 4000(a)(1)
13 which states that a vehicle must be registered to do any of the
14 foregoing. Bank's argument incorrectly assumes that Section
15 4000(a)(1) sets forth the only requirements for registration of a
16 vehicle. That is not the case. Vehicle Code Sections 6300 and
17 6301 are also, in and of themselves, "provisions of the Vehicle
18 Code which require registration of a vehicle." Both sections are
19 set forth fully below.

20 Except as provided in Sections 5905, 5907, and 5908, no
21 security interest in any vehicle registered under this
22 code, irrespective of whether the registration was
23 effected prior or subsequent to the creation of the
24 security interest, is perfected until the secured party
25 or his or her successor or assignee has deposited,
26 either physically or by electronic transmission
27 pursuant to Section 1801.1, with the department, at its
28 office in Sacramento, or at any other office as may be
designated by the director, a properly endorsed
certificate of ownership to the vehicle subject to the
security interest showing the secured party as legal
owner if the vehicle is then registered under this
code, or, if the vehicle is not so registered, an

1 application in usual form for an original registration,
2 together with an application for registration of the
3 secured party as legal owner, and upon payment of the
4 fees as provided in this code.

5 Cal. Veh. Code § 6300 (West 2000 & Supp. 2006).

6 When the secured party, his or her successor, or his or
7 her assignee, has deposited, either physically or by
8 electronic transmission pursuant to Section 1801.1,
9 with the department a properly endorsed certificate of
10 ownership showing the secured party as legal owner or
11 an application in usual form for an original
12 registration, together with an application for
13 registration of the secured party as legal owner, the
14 deposit constitutes perfection of the security interest
15 and the rights of all persons in the vehicle shall be
16 subject to the provisions of the Uniform Commercial
17 Code, but the vehicle subject to the security interest
18 shall be subject to a lien for services and materials
19 as provided in Chapter 6.5 (commencing with Section
20 3068) of Title 14 of Part 4 of Division 3 of the Civil
21 Code.

22 Cal. Veh. Code § 6301 (West 2000 & Supp. 2006).

23 The statutes are not models of clarity as the language used
24 therein does not precisely mesh with that used in the Commercial
25 Code. This is likely so because the two schemes were drafted
26 decades apart. While the beginning of Section 6300 seems to make
27 it apply only to vehicles already registered, the Section goes on
28 to require the deposit with the DMV of a properly endorsed
29 Certificate of Ownership "showing the secured party as legal
30 owner if the vehicle is then registered..., or, if the vehicle is
31 not so registered, an application ...for an original
32 registration, together with an application for registration of
33 the secured party as legal owner,...." Vehicle Code Section 6301
34 completes the scheme by stating that the deposit of the things

1 specified in Section 6300 "constitutes perfection of the security
2 interest."

3 Thus, Vehicle Code Sections 6300 and 6301 contemplate the
4 taking of a security interest in an unregistered vehicle and
5 provide that perfection in that circumstance requires deposit
6 with the DMV of (1) a properly endorsed Certificate of Ownership,
7 (2) an application for an original registration and (3) an
8 application for registration of the secured party as legal owner
9 (not to mention the payment of all required fees).⁴

10 The first reference in Vehicle Code section 6300 to
11 registered vehicles, when read in conjunction with the following
12 clause "irrespective of whether the registration was effected
13 prior or subsequent to the creation of the security interest"
14 appears simply (1) to acknowledge that registration may occur
15 only as a result of the creation of the security interest and the
16 attempt to perfect it and (2) to negate the very argument being
17 made by Bank - that section 6300 applies only to vehicles which
18 are already registered.

19
20 ⁴ The court notes that nothing in the scheme embodied in
21 Sections 6300 and 6301 requires regular renewals of registration
22 after perfection in order for the security interest to remain
23 perfected. The scheme only sets forth the method by which a
24 secured party requests that the DMV to issue a certificate of
25 title and a registration certificate showing that party as
26 lienholder. Once the secured party is listed as lienholder on
27 the certificate of title, its lien is perfected. Thereafter, a
28 lapse in registration or the filing of a Certificate of Non-
Operation does not affect the lienholder's perfected status
because of the creditor's appearance on the certificate of title
provides constructive notice of its lien. Babaeian
Transportation Co., 206 B.R. at 542.

1 The Trailers are not "subject to the provisions of the
2 Vehicle Code which require registration of a vehicle" merely in
3 the sense that they are vehicles which must be registered
4 whenever the Vehicle Code says so. They are "subject to the
5 provisions of the Vehicle Code which require registration of a
6 vehicle" because Bank took a security interest in them and wanted
7 to perfect that security interest.

8 None of the three exceptions contained in the first sentence
9 of Section 6300 applies here. Vehicle Code Section 5905
10 addresses circumstances where a security interest is satisfied,
11 cancelled or released and a new security agreement is executed
12 within 10 days thereafter between the same parties. In that
13 instance, the security interest is perfected on execution and the
14 formalities need not be performed. Vehicle Code Section 5907
15 applies to vehicles constituting inventory. As noted above, the
16 Trailers were not inventory. Vehicle Code Section 5908 applies
17 to subsequent transfers of security interests previously
18 perfected under Section 6300. The facts of this case fit into
19 none of the three exceptions.

20 This reading of Sections 6300 and 6301 also avoids the
21 absurdity of the logical extension of the Bank's argument. In
22 the hypothetical put to the parties on more than one occasion,
23 the court posited facts that would result in the flipping back
24 and forth in perfection requirements depending on whether a
25 vehicle at any particular instant is being driven, moved or left
26 standing in a manner described in Vehicle Code section

1 4000(a)(1). The court's conclusion is instead consistent with
2 the common understanding of perfection of security interests in
3 vehicles - that the Vehicle Code controls perfection of security
4 interests in vehicles, except for one carve-out for vehicles held
5 as inventory, typically by an automobile dealer.

6 Meraz v. Farmer Insurance Exchange, 92 Cal.App.4th 321
7 (Cal.Ct.App. 2001), does not require a different result. The
8 Meraz court considered a dispute over the proper interpretation
9 of language in an insurance policy. Nowhere in Meraz was the
10 issue of perfection implicated because no security interest
11 existed in the van/tool shed. Therefore, the state court was not
12 required to analyze the interplay between Vehicle Code Sections
13 6300 and 6301 and Commercial Code Section 9311(a)(2)(A). It
14 simply analyzed those sections of the Vehicle Code that could
15 arguably be analogized to the facts presented in that case. It
16 needed go no further than it did. Meraz is not applicable to the
17 issue facing this court.

18 This court's interpretation of Sections 6300 and 6301 is
19 also consistent with precedent from the California Supreme Court.
20 In T & O Mobilehomes v. United California Bank, 40 Cal.3d 441,
21 709 P.2d 430, 220 Cal.Rptr. 627 (1985), the California Supreme
22 Court discussed extensively the interplay between the Commercial
23 Code and the Vehicle Code on the subject of perfection. T & O
24 Mobilehomes is not dispositive here because it addressed a
25 different issue, holding that the "interest of a bona fide
26 purchaser of a vehicle subject to registration under the Vehicle
27
28

1 Code prevails over a technically perfected security interest
2 which is not disclosed on the certificate of ownership." T & O
3 Mobilehomes, 40 Cal.3d at 455. However, the discussion therein
4 is relevant to this matter because in 1979, when the transactions
5 at issue in T & O occurred, mobilehomes were subject to
6 perfection under the Vehicle Code. See T & O Mobilehomes, 40
7 Cal.3d at 447-48.

8 The following excerpt is reproduced at length to provide
9 sufficient context, both factual and temporal, for the discussion
10 in T & O Mobilehomes.

11 As previously noted, the UCC provides that a perfected
12 security interest is generally effective against a
13 purchaser of the collateral. (See §§ 9201, 9301, subd.
14 (1)(c), but see § 9307, subd. (1).) This rule is
15 premised upon the assumption that the filing of a
16 financing statement with the Secretary of State will
17 permit prospective purchasers and encumbrancers to
18 ascertain the existence of security interests in the
19 property by checking a centralized record system. In
20 other words, the UCC's perfection system, like the
21 title recordation systems employed for real property,
22 is based on constructive notice given through
23 recordation. (See Note, Security Interests in Motor
24 Vehicles Under the UCC: A New Chassis for Certificate
25 of Title Legislation (1961) 70 Yale L.J. 995, 1005
26 [hereafter Security Interests in Motor Vehicles].)

27 By contrast, the special scheme employed for the
28 registration of security interests in motor vehicles
relies primarily on actual notice to subsequent
purchasers through a certificate of ownership held by
the seller. (See Security Interests in Motor Vehicles,
ibid.; Comment, The California Used Car Dealer and the
Foreign Lien - A Study in the Conflict of Laws (1959)
47 Cal.L.Rev. 543, 546-547.) Because this "full title"
system requires all security interests to be listed on
the statutory certificate of ownership (see Veh. Code,
§§ 370, 4451, 4453), a purchaser may rely on the
certificate and is not expected to check a centralized
set of records to determine whether a security interest
has been recorded. [footnote]

1 California adopted the full title system decades before
2 the advent of the UCC, and the system remains
3 essentially unchanged. The buyer's right to rely on
4 the information on the certificate of ownership has
5 been emphasized by our courts both before and after the
6 enactment of the UCC. In First National Bank of Hays
7 City v. Sprigg (1962) 209 Cal.App.2d 258 [25 Cal.Rptr.
8 838], decided one year before the enactment of the UCC,
the court observed that "California is known as a 'full
title' state insofar as registration of motor vehicles
is concerned. This means that anyone transacting
business with the owner of a motor vehicle can rely
upon the title as reflected by the registration
certificate, without further inquiry." (Id., at pp.
259-260.)

9 Ferraro v. Pacific Finance Corp. (1970) 8 Cal.App.3d
10 339 [87 Cal.Rptr. 226], decided seven years after
11 adoption of the UCC, reached the same conclusion. "In
12 California, as is well known to anyone engaged in the
13 business of selling or lending money on the security of
14 automobiles, a prospective purchaser of a motor vehicle
without knowledge of any defect of title may rely
exclusively on the information disclosed by the
statutory certificate of ownership." (Id., at p. 346,
fn. 1.)

15 Like full title statutes in other states, Vehicle Code
16 section 6301 holds a purchaser to constructive notice
17 of a security interest from the time the secured
18 party's application for registration as legal owner is
19 deposited with the DMV. (See Veh. Code, §§ 6301, 6302;
20 Security Interests in Motor Vehicles, *op. cit. supra*,
21 at p. 1005.) However, the purpose of this provision is
22 primarily to establish priority among two or more
23 competing *lienholders* according to time of receipt of
the applications. (See *ibid.*) The deposit of the
application is deemed to impart constructive notice
only because it is assumed that the security interest
will actually be recorded in the DMV's files. (See
Eckhardt v. Morley (1934) 220 Cal. 229, 230-231 [30
P.2d 423].) In Eckhardt, this court construed the
predecessor to Vehicle Code section 6301 to require
actual registration before constructive notice would be
deemed to date from the time of deposit. (*Ibid.*)

24 The same reasoning applies to the requirement for
25 notation of the security interest on the certificate of
26 ownership. Upon registration, the DMV is required to
27 issue a new certificate of ownership to the legal owner
28 listing the legal owner's name and address. (See Veh.
Code, §§ 1800, subd. (a), 4450, 4451, 4453, 6302.)

Thus, it is assumed that the deposit of an application for registration will result in simultaneous registration of the security interest and issuance of a new certificate of ownership listing the secured party as the legal owner. The deposit should not be deemed to impart constructive notice to a buyer unless the security interest has been accurately listed on the certificate of ownership.

T & O Mobilehomes v. United California Bank, 40 Cal.3d 441, 448-51, 709 P.2d 430, 220 Cal.Rptr. 627 (1985). The applicable sections of both the Commercial Code and the Vehicle Code referenced in T & O Mobilehomes are materially unchanged today. T & O Mobilehomes applied pre- and post-UCC Commercial Code Section 9302(3)(b). The pre-UCC version provided:

"(3) The filing of a financing statement otherwise required by this division is not necessary or effective to perfect a security interest in property subject to ... [P] (b) The provisions of the Vehicle Code which require registration of a vehicle or boat; but during any period in which collateral is inventory, the filing provisions of this division (Chapter 4) apply to a security interest in that collateral"

See T & O Mobilehomes, 40 Cal.3d at 447 n.6. (emphasis added) (ellipsis in original). The 1981 version of the statute provided:

3) The filing of a financing statement otherwise required by this division is not necessary or effective to perfect a security interest in property subject to ... (b) The provisions of the Vehicle Code which require registration of a vehicle or boat, or provisions of the Health and Safety Code which require registration of a mobilehome or commercial coach; but during any period in which collateral is inventory, the filing provisions of this division (Chapter 4 (commencing with Section 9401)) apply to a security interest in that collateral.

1 Cal. Comm. Code § 9302(3)(b) (West, Westlaw through 1981
2 legislation) (emphasis added). The current version reads as
3 follows:

4 Except as otherwise provided in subdivision (d), the
5 filing of a financing statement is not necessary or
6 effective to perfect a security interest in property
subject to...(2)(A) The provisions of the Vehicle Code
which require registration of a vehicle or boat.

7 Cal. Comm. Code § 9311(a)(2)(A) (West 2007) (emphasis added).

8 There are three non-material changes in the current version.

9 First, Division 9 was renumbered and the emphasized language has
10 been moved from Section 9302(3)(b) to Section 9311(a)(2)(A).

11 Second, the reference to the Health and Safety Code provision
12 regarding mobilehome perfection has been moved to Section

13 9311(a)(2)(B). Third, the inventory exception has been moved to
14 Section 9311(d). The emphasized language in each excerpt above

15 is identical in all three versions of the relevant section of the
16 Commercial Code.

17 Vehicle Code Section 6301 has seen even less alteration
18 since T & O Mobilehome. The 1979 version of the statute read as
19 follows:

20 When the secured party, his or her successor, or his or
21 her assignee, has deposited with the department a
22 properly endorsed certificate of ownership showing the
23 secured party as legal owner or an application in usual
24 form for an original registration, together with an
application for registration of the secured party as
25 legal owner, the deposit constitutes perfection of the
security interest and the rights of all persons in the
vehicle shall be subject to the provisions of the
Uniform Commercial Code....

26 See T & O Mobilehome, 40 Cal.3d at 448. The current version of
27 the statute reads as follows:

1 When the secured party, his or her successor, or his or
2 her assignee, has deposited, either physically or by
3 electronic transmission pursuant to Section 1801.1,
4 with the department a properly endorsed certificate of
5 ownership showing the secured party as legal owner or
6 an application in usual form for an original
7 registration, together with an application for
8 registration of the secured party as legal owner, the
9 deposit constitutes perfection of the security interest
10 and the rights of all persons in the vehicle shall be
11 subject to the provisions of the Uniform Commercial
12 Code....

13 Cal. Veh. Code § 6301 (West 2000 & Supp. 2006). The only change
14 is the addition of a provision allowing electronic submission of
15 the documents required for perfection.

16 T & O Mobilehome's conclusion that California is a full
17 title jurisdiction continues to be valid. The Trailers became
18 "subject to the provisions of the Vehicle Code which require
19 registration of a vehicle" when Bank took a security interest in
20 them and wanted to perfect that interest. Bank's security
21 interest in the Trailers was therefore unperfected as of the
22 Petition Date because Bank failed to comply with the perfection
23 requirements of Vehicle Code Sections 6300 and 6301.

24 GSMD-2: Avoidance

25 Having determined that Bank's security interest was
26 unperfected on the Petition Date, the court now turns to
27 Trustee's request for a determination that he can avoid Bank's
28 security interest pursuant to 11 U.S.C. § 544.

29 The request for a determination of avoidability is denied.
30 The Second Trustee SJ Request asks for "summary judgment on the
31 first claim for relief, subject to any remaining affirmative
32 defenses that [Bank] can properly assert." The ruling that

1 Trustee requests would leave undecided facts and issues relating
2 to Bank's affirmative defenses. Because Trustee has not
3 established that none of Bank's affirmative defenses can bar
4 recovery on the first claim for relief, Trustee is not presently
5 entitled to a determination that he can avoid Bank's unperfected
6 security interest.

7 CONCLUSION

8 The Bank Motion to Reconsider is granted. The court
9 committed clear error in its initial ruling on the First Bank SJ
10 Request and therefore the First Bank SJ Order is vacated.

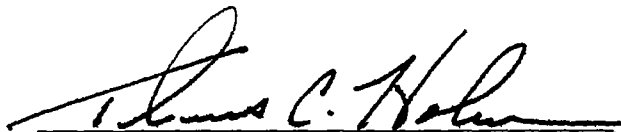
11 On reconsideration, the First Bank SJ Request is granted in
12 part and denied in part. The provisions of the California
13 Vehicle Code governed the perfection of Bank's security interest
14 in the Trailers. Because Bank failed to perfect its security
15 interest under the provisions of the Vehicle Code, Bank's
16 security interest in the Trailers was unperfected on the Petition
17 Date. Bank has failed to show in the First Bank SJ Request that
18 it is entitled to judgment as a matter of law and summary
19 judgment for Bank is therefore denied. However, Trustee as non-
20 moving party is entitled to an order setting forth the following
21 partial summary adjudication: Bank's security interest in the
22 Trailers was not perfected as of the Petition Date.

23 The Second Trustee SJ request is granted in part. Trustee
24 is entitled to an order setting forth the following partial
25 summary adjudication: Bank's security interest in the Trailers
26 was not perfected as of the Petition Date.

1 Except as set forth above, the above-captioned motions are
2 denied.

3 The court will issue separate orders.

4
5 Dated: SEP -4 2007


6 Thomas C. Holman
7 United States Bankruptcy Judge
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

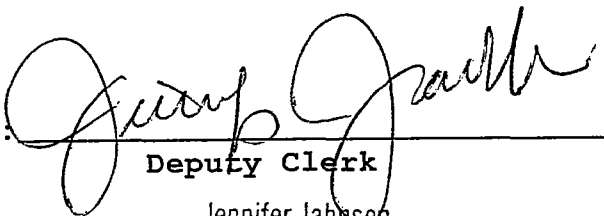
The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

Merle C. Meyers
44 Montgomery St #1010
San Francisco, CA 94104

Robert B. Kaplan
2 Embarcadero Center 5th Fl
San Francisco, CA
94111-3824

Office of the U.S. Trustee
501 I St #7-500
Sacramento CA 95814

DATED: 9/4/07

By: 
Deputy Clerk
Jennifer Jahnsen

EDC 3-070 (New 4/21/00)